
Motions

Carter v Rafferty 631 F Supp 533

11-5-1974

Motion For a New Trial: New Jersey v. Rubin Carter and John Artis

Lewis M. Steel '63

See I

P-442-499

PASSAIC COUNTY COURT
LAW DIVISION: CRIMINAL
INDICTMENT NO. 167-66

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STATE OF NEW JERSEY,

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D310

vs.

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RUBIN CARTER and
JOHN ARTIS,

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MOTION FOR A NEW TRIAL

Defendants.

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Jersey City, New Jersey
November 5, 1974

B E F O R E:

The Honorable SAMUEL A. LARNER, A. J. S. C.

A P P E A R A N C E S:

JOSEPH D. J. GOURLEY, Esq., and
JOHN F. GOCELJAK, Esq.,
For the State.

PAUL F. FELDMAN, Esq.,
For the Defendant Carter.

MESSRS. NOONAN & FLYNN,
BY: JOHN W. NOONAN, Esq.,
For the Defendant Artis.

De Simon

Reported by:

Frederick L. Goldberg, C.S.R.
Raymond J. Mastandrea, C.S.R.
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Official Court Reporters.

I N D E X

1	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>
2	KENT GEORGE KELLOGG			
3	By Mr. Feldman		443	
4	By Mr. Noonan		450	
5	VINCENT DE SIMONE			
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11	RUDOLPH BAILEY			
12	By Mr. Goceljak	545		
13	By Mr. Feldman		550	
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15	<u>EXHIBIT</u>	<u>DESCRIPTION</u>	<u>IDENT.</u>	<u>EVID.</u>
16	DA-10	Handwritten notes of Lt. DeSimone dated June 18, 1966	458	524
17	DA-11	Document	486	490
18	DA-12	Post Trial Report	488	
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Apt 1

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M O R N I N G S E S S I O N

THE COURT: All right, Mr. DeSimone,

MR. GOCELJAK: Put Mr. Kellogg on again this morning.

THE COURT: Oh, you are putting him on?

MR. GOCELJAK: Yes.

THE COURT: All right.

K E N T G E R O G E K E L L O G G, having been previously sworn, testifies as follows:

THE COURT OFFICER: This witness has been sworn.

MR. GOCELJAK: We had finished our direct examination.

THE COURT: Yes.

All right.

CROSS-EXAMINATION

BY MR. FELDMAN:

Q Mr. Kellogg, did Detective DeSimone get in touch with you a few weeks ago?

A Yes, sir.

Q You recall the date? A No, not exactly. He told me I'd probably have to appear.

THE COURT: Can't hear a word you're saying. You'll have to speak up.

A Yes, he did.

A-2

1 Q Did you go to his office? A Yes, I
2 did.

3 Q Where do you live? A I live at
4 10 Arch Street in Ogdensburg.

5 Q When you went to his office do you recall what
6 transpired? A Yes, sir.

7 Q What do you recall? A We went
8 over my testimony at the trial.

9 Q And did he make a tape recording of that
10 conversation? A Yes, sir.

11 Q Did he go over all your testimony at the trial?

12 A Yes, sir.

13 Q And did he go over all your Grand Jury testi-
14 mony? A Well, he showed it to me. I looked
15 at it.

16 Q Did he read parts of it to you?

17 A I believe so.

18 Q Did he read all of it to you?

19 A I really don't remember. We just went over my
20 testimony, sir.

21 Q At the Grand Jury? A On the two
22 times, the two times that I testified.

end

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BRT1

1 Q You testified twice at the Grand Jury, didn't
2 you? A Yes, sir.

3 Q And you testified also at the trial?
4 A Yes, sir.

5 Q And when you say two times, which two times
6 that you testified did he go over with you?

7 A Oh, both statements that I had made.

8 Q Did he go over the entire transcript of your
9 testimony on October 26th, 1966, before the Grand Jury?

10 A Well, we went over it and he asked me, well, he
11 showed it to me and he said, "Look through it and see if
12 anything, if everything is true and the same."

13 And I said, "Yes."

14 Q Then all this took place on the tape?

15 A I don't remember exactly. He just asked me a few
16 questions on the tape and I answered them, that was all.
17 He asked me if it was the truth, what I had said and I said
18 yes, in reference to the trial.

19 Q Did he ask you or did he refresh your re-
20 collection as to the testimony here today with respect to
21 a conversation that you told the Grand Jury you had with
22 Alfred Bello? Did he read you questions and answers?

23 A No. This was all on my testimony, on the testimony
24 that he gave me a copy of my own testimony, the two times.

25 Q How long did this conference take?

B-2

1 A Not very long, not very long, just for the time of
2 tape recording.

3 Q Did he review the following testimony with you
4 from the testimony before the Grand Jury of October 26th,
5 1966, at which you testified? A It wasn't
6 exactly, we weren't reviewing it. He just said is everything
7 there is the truth. I mean, just as it was --

8 THE COURT: Well, the point is, did he read
9 the entire thing and go over it with you or not?

10 THE WITNESS: Well, he showed it to me, he
11 told me to look over, it over.

12 THE COURT: I am asking, did he read it,
13 question and answer, every question and answer and
14 ask you if that was correct or did he just ask you
15 a general question?

16 THE WITNESS: No. He asked me questions, he
17 asked me questions that were asked in the, in my own
18 testimony.

19 THE COURT: Do you understand my question?
20 Did he pick up the document, the book, and take each
21 question and answer and review it with you?

22 THE WITNESS: Yes, sir.

23 Q (By Mr. Feldman) Did he review this question
24 and answer series with you?

25 "Questions: He told you that?

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"Answer: He told me that.

"Questions: Did he?"

THE COURT: What does that mean? That is of no significance to me sitting as a fact finder. Start where it has some meaning.

Q "Questions: Did you ask?

"Answer: He might have heard this, I don't know, but he told me that Rubin shot, Rubin Carter shot up the whole bar."

Do you recall him going over that question and answer with you? A Yes, sir.

Q You recall now whether Alfred Bello told you that he thought that Rubin Carter shot up the whole bar or somebody might have told him that Rubin shot up the whole bar? A No. He had come in, as I put on my

testimony, he had come in and said that Rubin Carter shot up the whole bar.

THE COURT: Will you keep your voice up.

THE WITNESS: I have a very low voice.

THE COURT: I understand, but you have to yell.

Will you please read that answer.

MR. MASTANDREA: "Answer: No. He had come in, as I put on my testimony, he had come in and said that Rubin Carter shot up the whole bar."

CGtl

1 Q That's what he told you?

2 A Yes, sir.

3 Q But, did he also tell you that he might have
4 heard that from somebody else? A No, he didn't
5 say this, sir.

6 Q But, you told that to the Grand Jury?
7 THE COURT: Told what to the Grand Jury?

8 MR. FELDMAN: He might have heard this.

9 Q Is that correct?

10 MR. GOCELJAK: I object, your Honor.

11 THE COURT: Objection sustained.

12 Do you have a specific question and answer?

13 Point it out.

14 MR. FELDMAN: I just read the specific ques-
15 tion and answer.

16 THE COURT: Read it again.

17 Q (By Mr. Feldman) "Questions: Did you ask?

18 "Answer: He might have heard this."

19 Do you know what you said there?

20 THE COURT: What does it mean? Objection
21 sustained. Either read the entire group of ques-
22 tions so it has some meaning and do not pick out a
23 particular question which has no meaning.

24 MR. FELDMAN: Starting at the top of the page --

25 Q "Questions: Which apartment?

C-2 1 "Answers: North 7th Street with Sylvia. She
2 wasn't in there. Bello came in. When he came in he was
3 all excited. I said what happened.? What did you do?
4 Still I didn't know what happened. I didn't know what
5 happened. He came in and said, 'Rubin Carter shot up the
6 whole bar.'

7 "Question: He told you that?

8 "Answers: He told me.

9 "Question: Did you ask?

10 "Answer: He might have heard this. I don't
11 know. But, he told me that Rubin Carter shot up the whole
12 bar."

13 Is that your testimony before the Grand Jury?

14 A Yes.

15 Q The reference to "He might have heard this,"
16 is that because of something that Bello told you?

17 A Well, I don't recall now, sir. It's quite a number
18 of years ago. This is what had happened. I don't recall
19 now. I just glanced over my testimony. This is what had
20 happened. I told the truth. Now it's a little hard to
21 remember back that far.

22 Q Did Lieutenant DeSimone go over that testimony
23 with you? A Yes, sir.

24 Q And did you discuss with him the meaning of
25 "He might have heard this"? A No, sir.

MR. FELDMAN: I have no further questions.

1 MR. NOONAN: I have just a few, your Honor.

2 THE COURT: All right.

3 CROSS-EXAMINATION

4 BY MR. NOONAN:

5 Q Mr. Kellogg, in the early morning hours of
6 June 17th, 1966, Dex Bradley came to North 7th Street and met
7 with you and Sylvia Smith; isn't that a fact?

8 A Yes, sir.

9 Q What time was this, roughly?

10 A Well, it was pretty late in the morning. It was just
11 before dawn.

12 Q Just before dawn, 4:30, five o'clock?

13 A Something like that, I guess.

14 Q And then he asked you to drive him back to the
15 Ace Metal Company at Franklin and East 16th Street, didn't
16 he? A Yes, sir.

17 Q And you and Sylvia did drive him back there,
18 didn't you? A Yes, sir.

19 Q And you — all three of you knew that two
20 people had been killed and two people seriously wounded right
21 around the corner, didn't you?

22 A Yes, I knew at that time. I believe I know. I
23 believe I had known. I knew there was shooting. I didn't
24 know anybody was killed then.

25 Q All right.

1 Ever occur to you that police might be in the

2 area? A Yes, sir.

3 Q But you went back nonetheless?

4 A Yes, sir.

5 Q And you knew that Dex Bradley was going to
6 break into the Ace Metal Company, didn't you?

7 A I don't recall now that I knew this at that time.

8 Q All right.

9 After he got back into the car, did he tell you
10 he successfully broke in and didn't find anything?

11 A He didn't tell me anything, sir.

12 Q Well, at 4:30 or five o'clock in the morning you
13 didn't think you were taking him up to that area to get a
14 pack of cigarettes or a beer, did you?

15 A No, sir, but I didn't ask him.

16 Q And you knew that he had tried to break into
17 the Ace Metal Company before, didn't you?

18 A I had that assumption, yes.

19 Q And you took him back to the very same area and
20 got out of the car, right?

21 A Yes, sir.

22 Q All right.

23 Dex Bradley within two hours or so after the
24 shooting never said to you, "Rubin Carter blew that place

25 apart," did he? A No, sir.

1 Q Because if he had, you would have told Lieu-
2 tenant DeSimone --

3 THE COURT: Don't make statements.

4 MR. NOONAN: Cross-examination, your Honor.

5 THE COURT: Yes, but you are making a statement.

6 You are not asking a question now.

7 Q My question in the form of a statement was, if
8 you had heard that you would have told Lieutenant DeSimone,
9 would you not? A That's correct.

10 Q Okay.

11 And at no time before you testified did you ever
12 testify to anything like that, did you?

13 A Excuse me, would you repeat the question?

14 MR. GOCELJAK: I don't understand the question.

15 MR. NOONAN: I'll rephrase it.

16 Q You testified in May 1967; correct?

17 A Yes, sir.

18 Q You never testified that Dex Bradley told you that
19 Rubin Carter had shot up the place, did you?

20 A No, sir, because he didn't. He never told me.

21 Q He didn't tell you?

22 A No, sir.

23 Q Within two hours after the shooting or three;
24 right? A That's correct, sir.

25 Q And then in November of 1966 you appeared before

1 a Grand Jury; right? A That's correct.

2 Q Lieutenant DeSimone ever talk to you about your
3 participation in the second successful break-in of the
4 Ace Metal Company? A Yes, sir.

5 Q Did he ever tell you that your participation
6 constituted a crime?

7 A Not exactly. Not exactly, sir, because I wasn't
8 really involved with this.

9 Q You just took him back to a place where he had
10 attempted to break in at about 4:30 in the morning or five
11 o'clock; is that what you are telling us?

12 A Yes, sir.

13 Q But you didn't feel you participated?

14 A No, sir.

15 Q Lieutenant DeSimone never said directly, "You
16 know, you could be prosecuted for this," did he?

17 A He said, it's a -- I would be part of this.

18 Q Right.

19 And did he tell you directly that he would --
20 Passaic County authorities would not prosecute you?

21 A Well, no, sir. I had -- there would be no problem,
22 yes. He said there was no problem there, because I had
23 called my own lawyer.

24 Q He said there was no problem in this regard; is
25 that what you are telling us?

1 A Well, no, sir. I just -- I wasn't going to be
2 prosecuted. What would have been the charge?

3 Q Breaking and entering.

4 A No. I imagine it would have been suspicion of
5 accessory after the fact of attempted breaking and
6 entry or something like this.

7 Q Or accessory before the fact of the attempt?

8 A Or whatever.

9 Q You knew that Dex Bradley and Alfred Bello were
10 going up to the Ace Metal to do a B&E, didn't you?

11 A I didn't know for sure, sir. I had just met them the
12 day before.

13 Q And you just drove up to Franklin Street
14 between East 16th and East 18th and parked there at 2:30 in
15 the morning and they got out of the car, is that what you
16 are telling us? A Yes, sir.

17 Q You knew you were participating in an attempted
18 B&E at that time, didn't you?

19 A I imagine it was. I imagine I knew what they were
20 going to do.

21 Q And you knew that when you went back there that
22 he was successfully breaking and entering into that place,
23 didn't you? A No, sir, he didn't tell me
24 this.

25 Q Well, Lieutenant DeSimone told you about that,

1 didn't he? A Right.

2 Q Didn't he indicate to you either directly or
3 indirectly you'd never be prosecuted for your participation
4 in either of those two crimes?

5 A I don't recall that, sir.

6 MR. NOONAN: I have nothing further, your Honor.

7 THE COURT: All right, sir, that is all.

8 MR. GOCELJAK: That is all for this witness.

9 THE COURT: All right.

10 (The witness leaves the witness stand.)

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DeSimone

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1 V I N C E N T D E S I M O N E, having been sworn,

2 RESUMES:

3 THE COURT OFFICER: This witness has been

4 SWORN.

5 CROSS-EXAMINATION

6 BY MR. NOONAN:

7 Q Lieutenant DeSimone, you've been in law
8 enforcement since 1946, haven't you, sir?

9 A '47.

10 Q '47, excuse me. A Yes, sir.

11 Q That's right, at Page 401 yesterday that is
12 what you testified to, please forgive me.

13 First with the Paterson Police Department and
14 then in October -- I'm sorry, you said you were with the
15 County since '51? A I was in the sheriff's
16 office as a court officer for a year and a half and then in
17 April of 1953 I joined the Prosecutor's staff as a county
18 detective as a result of a civil service exam.

19 Q All right. Since 1953 you've been a county
20 detective, correct? A That's correct.

21 Q And you've been active in the County Detective
22 Association, have you not? A I served as
23 president for two years.

24 Q When were you president, Lieutenant DeSimone?

25 A It was either '70 -- 1970 and '71 or '71 and '72, I

1 don't recall.

2 Q Were you an officer of any sort in 1966 and
3 1967? A No, just a member, an active member.

4 Q But you were an active member, correct?

5 A I was.

6 Q Now, referring to your testimony at Page 405
7 in the transcript of yesterday, Lines 18 through 20, "Some-
8 time that afternoon I took an oral statement from Alfred
9 Bello and I recorded notes as he was describing his
10 activities."

11 Correct? A What afternoon are
12 you referring to?

13 Q The afternoon of June 18th, 1966.

14 A That's correct.

15 Q And you have that statement, haven't you, the
16 handwritten notes? A I do, sir. June 18th?

17 Q Yes. A While you're at it,
18 June 20th.

19 Q All right, you hold that.

20 MR. NOONAN: May I have this yellow cap or
21 yellow paper, I believe it's five sheets handwritten,
22 marked with defendant Artis' next identifying number,
23 please.

24 THE COURT: All right.

25 THE CLERK: DA-10 for identification, your

E-3

1 Honor.

2 THE COURT: DA-10 for identification.

3 (DA-10, handwritten notes of Lieutenant
4 DeSimone dated June 18, 1966, marked for identifi-
5 cation.)6 Q Now, Lieutenant DeSimone, did you, prior to
7 the trial in May, 1967, ever bring these handwritten notes
8 to the attention of Assistant Prosecutor Vincent Hull?9 A I don't recall exactly. I conferred with him many
10 times, but -- I don't know that he read every one of my
11 notes minutely.12 Q So that you're telling us that you do not have
13 a specific recollection of going over DA-10 for identifica-
14 tion with him; is that right? A No.15 Q You could have and you could not have, you
16 just -- A At this point I don't even
17 remember what is NC-10.18 Q DA-10. A Whatever you're referring
19 to.20 Q All right. We'll go back to that in a
21 minute.22 Do you have a recollection of whether you ever
23 told Prosecutor Thevos of the contents of Mr. Bello's oral
24 statement taken on June 18th, 1966? A No, I
25 have no recollection of that.

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Q Would it be fair to say that at any time prior to trial, and more specifically after Alfred Bello had completed his direct examination, that neither Mr. Raymond Brown or Arnold Stain were given copies of DA-10 for identification, or show the original that is marked?

A I don't recall, sir.

Q Well, if it had been used at the trial it would be reflected in the trial transcript, wouldn't it?

A I don't know.

THE COURT: How would he know?

Q Referring to Page 6 of DA-10 for identification, "At 10:20 p.m." -- you noted the time, didn't you?

A I don't know.

(Witness examines exhibit.)

A (Continuing) Yes.

Q Excuse me.

"Bello shown eight photographs by Captain Gourley," right? A Right. If that's what it says.

Q "Number 3 photo Rubin Carter"?

A Right.

Q "Number 2" -- no name? A Right.

Q And the notation, is that your handwriting or his? A That's mine.

Q "I'm not sure." A Precisely.

F1-2

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Q Number 2 was John Artis, wasn't it?

A I don't recall at this time.

Q You didn't make a list of the eight people in the photos, did you? A No, sir.

Q Did you -- you knew that Carter and Artis were together on the morning of the 17th?

A I did.

Q You interrogated both? A I had.

Q At Paterson Police Headquarters during the morning and day of the 17th, didn't you?

A Yes.

Q Wouldn't you say it's likely that you showed Alfred Ballo a picture of John Artis?

A Looking at that now, I would say yes, it's very likely.

Q Okay.

He says, and then further down he says, "I do not know the names. But I'm sure of No. 3 photo. I'm not sure of No. 2 photo." A Correct.

Q Do you know what he meant by that?

A I would assume that -- refreshing my recollection at that time for a short time he indicated he was sure of Rubin Carter, but he wasn't sure --

Q Of John Artis? A John Artis. And subsequently recanted that.

DeSimone - cross

F1-3

1 Q He says, "The ball on was a little lighter
2 than the other one," correct?

3 A That's correct.

4 Q "The one photo, No. 3, it could, it looks
5 like it might be Rubin Carter. I'm not sure."

6 Isn't that what he said?

7 A Precisely.

8 Q Further on he says, "I'm not exactly positive
9 of the No. 3 man," right? A Precisely.

10 Q And you said, "He further said, "At 10:20 p.m.
11 or shortly thereafter on the evening of June 18th, 1966, if
12 I saw him in person I probably could identify him," isn't
13 that what he said? A That's what he said

14 there. That's what I recall he said.

15 Q You didn't run a lineup on Rubin Carter and
16 other people? A No. Subsequent to this he
17 recanted. He said, "I don't know and I never heard of
18 Rubin Carter until October 11th."

19 Q Lieutenant DeSimone, you had at that time
20 been a lieutenant in the Homicide Squad for how many years?

21 This is June 18th of 1966. A I worked on
22 homicides. But, in 1960 I was promoted to lieutenant. I
23 don't know if I immediately -- approximately six years. I
24 was a lieutenant and more before that.

25 Q Looking at the six-page statement you tried

F1-4

1 to get down pretty much everything that is said and done,
2 don't you? A Well -- this is not the original
3 that I wrote. As he was talking, as I was interrogating him --

4 Q You had a little notebook?

5 A No. No. As a person talks to me, as I write it, if
6 I don't transpose it in a short time I can't read my own
7 notes. As he was talking I scribbled. This is the product
8 of transposing the notes as he was talking.

9 Q And eight years later you don't have the
10 original notes with you? A No.

11 Q This is an original synopsis?

12 A Right.

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1 Q You're sure as you say Alfred Bello recanted?

2 A He stated a few different times "Looks lik him. The
3 car was him." He recanted. We let him go. He was free.
4 He was free as a breeze.

5 Q And when he made the statement -- withdraw that.
6 From your reading of the various police reports in the
7 Paterson Police Department and on the early morning of June
8 17th, 1966 continuing on through the day and questioning
9 various people, you knew that shortly after the incident
10 Rubin Carter and John Artis in a white automobile were
11 brought to the scene, didn't you?

12 A Yes, I did.

13 Q And you knew that Alfred Bello was there, didn't
14 you? A Yes. Yes, I did.

15 Q Did you ever say to him, "Alfred, you say that
16 if you saw him in person you probably would recognize him.
17 Didn't you see him less than 36 hours ago"?

18 A I don't believe I did at that time.

19 Q Is there some other time you said it on that
20 day? A No.

21 Q Okay. And you're not sure whether you told
22 Assistant Prosecutor Hull about this statement?

23 A There would be no reason.

24 THE COURT: What's that?

25 MR. NOONAN: "There would be no reason."

1 THE WITNESS: There would be no reason. This
2 was part of the investigation. He had recanted what
3 he had told me.

4 Q When he was talking you three or four months
5 later about the incident and identifying Carter, did you
6 feel it was unimportant to tell Prosecutor Hull or
7 Prosecutor Thevos that within hours after the shooting he
8 did not make a positive identification of Carter and wouldn't
9 say anything at all about Artis?

10 A We discussed it generally. But, not insofar as the
11 statement.

12 Q You never told that to Prosecutor Hull, did you?

13 A Definitely not. As I recall, I may have discussed
14 everything in here. I know I discussed phases of this.
15 To make the specific question "Did you tell Prosecutor Hull
16 or Prosecutor Thevos that Bello said yes it was Carter. No
17 it wasn't. Yes, it was Carter," no, I didn't do that.

18 Q You didn't do that with Prosecutor Thevos
19 either? A No.

20 Q Now, referring to page 407 in the transcript,
21 line 20 through 25 and continuing on over to page 408, line
22 1, I will read it to you -- we have to backtrack to line 16
23 where the question is put by Mr. Goceljak:

24 "Questions: Up to the time you spoke to Mr.
25 Bello on June 20th, had he made any identification as to the

1 persons who had been involved in the Lafayette Bar shooting?

2 "Answer: What was the date, sir?

3 "Question: Up until June 20th.

4 "Answer: Right. No specific. For a short
5 time he would indicate that it was or could have been Rubin
6 Carter. And then he wouldn't stand up to it and never
7 made no specific identification where he would repeat it
8 and say, 'Yes, it was Rubin Carter or John Artis.' There
9 was no specifics. There were inferences in there. But,
10 no specific identification." Do you remember that
11 testimony? A Yes, sir.

12 Q And as you sit here today, I believe you
13 testified yesterday, I will probably find it in the transcript
14 if there's any dispute, but you believe that Alfred Bello in
15 his statement of October 14th, which I believe has been
16 marked S-2 in evidence, and in his subsequent testimony in
17 the trial was telling the truth, you still believe that,
18 don't you? A Yes, sir.

19 MR. GOCELYAK: I object to the form of the
20 question.

21 THE COURT: Objection sustained.
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1 Q Well, when you questioned him in Oct of 1966
2 did you ever say to him, "Alfred, when I spoke to you within
3 hours after the shooting were you telling the truth to me
4 about identifying, being able to identify Carter, or were
5 you lying to me?" Did you ever ask that?

6 A That would be poor police procedure.

7 Q Is it police procedure to make a determination
8 of what is the truth or is it police procedure to assess the
9 various facts and arrive at a determination?

10 THE COURT: Don't answer the question.

11 MR. GOCELJAK: Objection.

12 Q Lieutenant DeSimone, were you convinced that
13 Alfred Bello's statement received in evidence as S-4 in
14 this proceeding given October 14th, 1966 was the truth?

15 MR. GOCELJAK: Objection.

16 THE COURT: Objection sustained.

17 MR. NOONAN: Judge, I think that --

18 THE COURT: It's not for him to say whether it's
19 the truth or not. You ask him fact questions, not his
20 opinion.

21 MR. NOONAN: All right.

22 Q All right. When Alfred Bello told you on
23 October 14, 1966 that he saw Rubin Carter and John Artis at
24 the scene of the Lafayette Bar coming out, one with a pistol
25 and one with a shotgun, did you believe him?

1 A Yes, sir.

2 MR. GOCELJAK: Same objection.

3 THE COURT: Well, he's already answered it.

4 Q Did you believe him on June 18th, 1966, when
5 he said I couldn't identify them?

6 MR. GOCELJAK: Same --

7 THE COURT: I thought I ruled on that and the
8 fact that you use a different word doesn't change the
9 substance of the question. Objection sustained.

10 MR. NOONAN: Judge, I think it goes --

11 THE COURT: You are asserting it, I'm ruling
12 against you.

13 MR. NOONAN: All right, thank you.

14 Q Incidentally, beginning at page 414 of
15 yesterday's transcript, and I'll have, so that we have it
16 fully in context, I'll have to start back at line 10.

17 "Answer: The first time I had came in contact
18 with Bradley was on or about August 4th of 1966.

19 "Question: Can you tell us what the
20 circumstances of that were?

21 "Answer: I was in the Paterson Detective
22 Bureau on another matter. Now, I heard a little excerpt
23 from the late Lieutenant Lynch, from LaConte and at that
24 time Mohl was on these new raps for Bradley, there were new
25 charges that Bradley was being held on. So I believe it was

1 Mohl or LaConte that said to me, I think Bentley wants to
2 talk a little too.

3 "So, I went in and was in the room for
4 approximately five minutes. Well, I asked him, I think I
5 said something to the effect of, Bello told us that he was
6 in the area that night and I understand that there is rumors
7 that you were with him. Now, I would like you to cooperate
8 with us. I said, would you try to identify someone for us
9 in the County Jail tomorrow."

10 And then at page 415, beginning at line 1;
11 question was put to you,

12 "Question: Was there someone in the County Jail?"

13 You answered, "Yes."

14 Third question or the question at line 3 was,
15 "What was his name?"

16 You answered, "Roosevelt Davis."

17 And then you were asked, "Was he a potential
18 suspect at the time?"

19 And you answered, "At that time he was a suspect."

20 Do you remember that?

21 A Yes, sir.

22 Q Now, do you have any notes or any report of the
23 involvement as developed prior to August 4th, 1966 of
24 Roosevelt Davis' activities that caused you to believe he was
25 a suspect?

A No. There may be some -- I
end don't have no notes myself, no.

H1Pt1

1 Q All right.

2 Paterson Police Department, did you see some-
3 thing? A There may some. I would imagine

4 there would be some, but I don't have them with me.

5 Q And sometime subsequent to August 4, 1966,
6 Roosevelt Davis, in your mind, was cleared as a suspect; is
7 that correct? A Along with others.

8 Q Along with others.

9 And when was that? A Well --

10 Q If you recall. A I don't recall
11 exactly, but subsequent to that August 4th date of 1966.

12 Q And prior to Alfred Bello's October 14th
13 statement or subsequent -- A I would say,
14 yes, yes.

15 Q Sometime between August 4th, 1966, and
16 October 14th, 1966, roughly, you, as the lieutenant of the
17 Homicide Squad in charge of this murder investigation, in
18 your mind cleared Roosevelt Davis and others as suspects;
19 correct? A Yes, I would say October 14th
20 culminated it.

21 Q Okay.

22 And that was because Alfred Bello told you
23 that Rubin Carter and John Artis were the two men that did
24 it; right? A With the cumulative evidence we
25 had from others.

1 Q Okay.

2 And was there a report submitted to assistant
3 prosecutor -- withdraw that.

4 Did you write up a report about Roosevelt
5 Davis and the others for inclusion in your file, Roosevelt
6 Davis cleared by such and such, see the above report as to
7 his activities and why you cleared him?

8 A I don't believe. Not in my reports. I don't believe
9 so.

10 Q Was it ever noted anywhere in the Paterson
11 Police Department files, if you know, or the Passaic County
12 Prosecutor's office, the name of Roosevelt Davis?

13 A I would imagine there are reports, a phase of reports
14 in Paterson, but I'm not positive. I would imagine there
15 are and I don't recall now. I recall the incident, the
16 individual, the girl involved, the taxi driver, et cetera,
17 vaguely, but the minute details I don't recall.

18 Q And so then would it be a fair statement to
19 say that prior to the conclusion of the testimony of
20 Alfred Bello and Arthur Dexter Bradley in May of 1967 in
21 this very case that Mr. Raymond Brown and Mr. Arnold Stein
22 were not -- the conclusion of their direct testimony were
23 not furnished with any reports or names of people such as
24 Roosevelt Davis and others?

25 MR. GOCELJAK: I object to the question.

H1-3 1 I think counsel is questioning this witness pertaining
2 to discovery proceedings which may or may not have
3 been applicable at the time.

4 THE COURT: What is the purpose of this? We
5 are not here going over the whole trial, or problem
6 of discovery, or procedure at the trial, or whether
7 counsel at that trial did a good job or bad job, or
8 knew everything or didn't know everything.

9 What is the purpose of this?

10 MR. NOONAN: Counsel at trial with the tools
11 he was given, both of them did an excellent job.

12 THE COURT: That is beside the point.

13 MR. NOONAN: That is the thrust --

14 THE COURT: Just a minute.

15 MR. NOONAN: I'm sorry.

16 THE COURT: This proceeding is within the
17 framework of the proceedings filed with the Court.
18 Is your question relevant in any way to that?

19 MR. NOONAN: Yes, sir.

20 THE COURT: How?

21 MR. NOONAN: It's relative to Brady vs.
22 Maryland material.

23 THE COURT: How is it relevant to the
24 application before the Court which is based upon
25 allegedly newly-discovered evidence?

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MR. NOONAN: Newly-discovered evidence, Judge, wasn't specifically listed to the recantations of Arthur Dexter --

THE COURT: It wasn't?

MR. NOONAN: No, sir.

THE COURT: I consider it was and the objection is sustained.

MR. NOONAN: I consider that I've made the record on that point, sir.

Thank you.

end

1 MR. FELDMAN: Your Honor, may I put something
2 on the record briefly?

3 THE COURT: Yes.

4 MR. FELDMAN: Our moving papers included a
5 memorandum that was submitted to the Court on October
6 22nd, which doesn't solely limit it to recantation,
7 but also included the issue of whether there were
8 any deals, or promises or whatever made with respect
9 to the witnesses.

10 THE COURT: No, it dealt with a specific ques-
11 tion of whether or not there was any withholding by
12 the State with regard to any promises made to these
13 witnesses. We are not talking about the overall in-
14 vestigation now. We are not concerned with what went
15 on --

16 MR. FELDMAN: I'm addressing --

17 THE COURT: Just a minute. Will you let me
18 finish a sentence?

19 MR. FELDMAN: I'm sorry.

20 THE COURT: We are not talking about the overall
21 investigation. We are not retrying this case. We are
22 not considering any possible problems of error that
23 could have been raised on appeal. We are in a pro-
24 ceeding which is very limited based upon what has been
25 presented to the Court. This question is irrelevant and I

1 so ruled.

2 Now, do you have anything else to say?

3 MR. FELDMAN: Yes.

4 I understand the thrust of what your Honor is
5 saying in saying we are limited solely to recantation.

6 THE COURT: There is one other element I'm aware
7 of and this question doesn't go to that question either.

8 MR. NOONAN: May I say at the time we filed the
9 motion and at the time we filed the brief on the second
10 point which -- or partially which you are allowing us,
11 we did not have this material of discovery.

12 THE COURT: We are not opening up all kinds of
13 post conviction conventions.

14 I've ruled, sir.

15 You will proceed.

16 MR. NOONAN: Thank you, Judge.

17 May I have S-6 in evidence, please?

18 Q (By Mr. Noonan) Now, looking at S-6 in evidence
19 you knew prior to the giving of S-6 in evidence that Brady
20 had returned to the Ace Metal Company in the early morning
21 hours of June 17, 1968 with Kellog and Sylvia Smith, didn't
22 you? A Yes, sir.

23 Q As a matter of fact, that is how you confronted
24 him with it; correct? A Yes.

25 Q Nothing contained in S-6 about any Kellog or

H2FV3

1 Sylvia Smith, is there? A No, sir.

2 Wait just one moment. I don't believe so.

3 No, I don't believe so.

4 Q And prior to the taking of any statement from
5 Kenny Kellog, or the giving of his Grand Jury testimony
6 or his testimony in court in May of 1967, did you tell him
7 directly that Passaic County would not prosecute him for
8 his participation, first, in the attempted B & E, and
9 secondly, in the second successful B & E?

10 A No.

11 MR. GOCELJAK: Your Honor, I'm going to object
12 to the form of the question, because it assumes that
13 there was a basis for a charge as to Mr. Kellog.

14 THE COURT: Well, we'll amend the question to
15 the possible charge.

16 MR. NOONAN: A possible charge.

17 I'll accept that amendment, your Honor.

18 Thank you.

19 THE COURT: What was your answer to that?

20 THE WITNESS: No.

21 Q (By Mr. Noonan) You never made him any
22 promise? A Not in regard to a break in in a

23 mill, or anything like that, no.

24 Q But the facts indicated that a possible crime
25 or two crimes had been committed by Kellog, didn't it?

1 A This came at the eleventh hour after all the investiga-
2 tion was in route. I didn't know until November 3rd that
3 there had been, in fact, a break committed. I wasn't even
4 aware attempt had been made, except for the fact that they
5 had so stated. There wasn't anything that I knew of on
6 paper.

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1 Q Well, did you ever indicate indirectly to
2 Kenny Kellogg, look, we're just not going to go into these
3 facts, you just tell us about Bradley's participation and
4 what you know? A All I asked him was to

5 tell me the truth and I made no mention of any possible
6 charge.

7 Q Okay. A There was also a cab
8 driver involved besides these individuals.

9 THE COURT: Just answer the question that's
10 asked.

11 THE WITNESS: I beg your pardon?

12 THE COURT: Just answer the question that is
13 asked.

14 THE WITNESS: Yes, I'm sorry.

15 Q Did you ever tell Assistant Prosecutor Hull that
16 Kenny Kellogg was involved in a second subsequent possible
17 crime? A Yes, sir, I did.

18 Q Did you ever tell Prosecutor Thevos?

19 A I don't recall, but Prosecutor Hull was aware because
20 I told him about the other witnesses we had as a result of
21 that revelation.

22 Q And you had no discussion concerning the fact
23 that, well, we won't bother with this B&E or attempted B&E,
24 we've got a big murder with three people and one gravely
25 wounded, did you? A No, no discussion about

1 the other charge.

2 Q But you did have such a discussion with Alfred

3 Bello, didn't you?

4 A Yes, as I recall during
the oral interrogation.

5 Q That is on the tape?

6 A On the tape, yes.

7 Q Did you tell -- you told Prosecutor Hull about
8 the tape, didn't you?

9 A Yes.

10 MR. NOONAN: It was S-9 in evidence, your Honor?

11 THE COURT: I don't know.

12 THE CLERK: S-9 is the transcript.

13 MR. NOONAN: S-10?

14 THE CLERK: S-10 is the Grand Jury minutes.

15 MR. NOONAN: S-8?

16 THE CLERK: S-8 is the tape.

17 Q The tape that we have heard yesterday that's
18 been marked as S-8, you definitely promised Alfred Bello that
19 he wouldn't be prosecuted for his participation in the
20 attempted D&E, didn't you?

21 A I didn't definitely promise, I told him I would do my
22 best to see that he wasn't, but I didn't make no definite
23 promise.

24 Q Did you ever follow through in that, on that
25 promise? A No, sir.

1 Q But the fact is that he never was prosecuted,
2 was he? A No, he was not.

3 Q And then the statute of limitations ran out,
4 didn't it?

5 MR. GOCHLJAK: Your Honor, I'm going to object
6 to the form of the question.

7 THE COURT: Yes. It's a matter of record, you
8 don't have to ask him that.

9 MR. NOONAN: All right, I'm sorry, Judge.

10 Q Then when you were talking with Bradley at page
11 incidentally, that promise to do whatever you could for
12 Alfred Bello with respect to that potential charge was never
13 transmitted directly to Mr. Raymond Brown or Mr. Arnold
14 Stein, was it?

15 THE COURT: By him?

16 MR. NOONAN: Or anyone else in the Prosecutor's
17 office if he knows.

18 THE COURT: How could he make a sweeping answer
19 as to what anybody, maybe involving I don't know, 25,
20 40, 50 employees.

21 MR. NOONAN: All right, I will rephrase my
22 question.

23 Q Did you personally ever in writing or orally as
24 the lieutenant in charge of this homicide investigation and
25 participation in the trial, tell Arnold Stein or Raymond

1 Brown, I promised Alfred Bello that with respect to the
2 attempted B&E I would do everything in my power to see that
3 he wasn't prosecuted? Did you ever tell him that?

4 A I don't recall, but I don't imagine I did.

5 Q All right. Did you ever tell Prosecutor Hull
6 in those words that you made a statement such as that?

7 A No, never.

8 Q No. Did you ever tell Prosecutor Thevos?

9 A No.

10 Q Did you ever tell Prosecutor Hull, "Vinnie, I
11 think you ought to listen to that tape"?

12 A I beg your pardon?

13 Q Did you ever tell Assistant Prosecutor Vincent
14 Hull words to the effect, "Hey, Vinnie, you know, we have a
15 tape of this guy, I think you better listen to it"?

16 A I don't recall, he might have listened to it, I don't
17 recall.

18 Q And at the conclusion of Mr. Bello's direct
19 testimony, were you present at counsel table, if you recall?

20 A In this courtroom?
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JIGtl 1 Q No, sir. In May of 1967.

2 A I was probably present. I don't recall. But, I was
3 present during the major portion of the trial. And I sat,
4 just as I sit here, I left to make phone calls, contact
5 people. But, I was there for the bulk of the trial. I
6 don't recall specifically, but --

7 Q At the conclusion of Mr. Bello's direct testi-
8 mony Mr. Brown and Mr. Stein were not furnished with DA-10
9 or a copy thereof, were they? A I don't
10 recall.

11 Q And they were not furnished with a copy of a
12 tape, were they? A I don't recall. But, I
13 don't believe so.

14 Q Okay.

15 Now, at Page 424 where you're talking to
16 Arthur Dexter Bradley at Line 1:

17 "Answer: I further told him I had, I couldn't
18 even promise him anything in my own county where I know the
19 judges and therefore in the foreign counties where I didn't
20 know the judges I couldn't promise him anything but I did
21 promise him that I would go to every prosecutor's office
22 where there were charges pending against him and make known
23 the fact that he had testified in a triple homicide in the
24 hope that he would relate this to their respective probation
25 departments who were preparing PSI's." Which, I believe,

J1-2 1 means "Pre Sentence Investig tion"?

2 A Yes.

3 Q You consider that some sort of promise to
4 Dexter Bradley? A Yes.

5 Q You promised him you'd go to every prosecutor
6 where he had charges pending and relate the fact he was a
7 witness in a triple homicide in the hope they would bring
8 it to the attention of the respective probation departments
9 in preparing the Pre Sentence Report which the judge reads
10 in handing down sentencing, is that correct?

11 A Exactly.

12 Q Did you tell Assistant Prosecutor Vincent Hull
13 of that promise? A Yes. Sooner or later, I
14 did.

15 As a matter of fact, he assisted me in some of these
16 contacts.

17 Q Did you tell Prosecutor John Thevos of this
18 promise? A I don't recall if I specifically
19 told Prosecutor Thevos. But, I told the trial attorney,
20 Mr. Hull.

21 Q And continuing on, you said to Mr. Bradley,
22 at Line 12:

23 "Answer: Now, I said, what will eventually
24 be the outcome I can't promise you, but I promise you I
25 will do everything in my power, within my means, but the

J1-3 1 primary thing is the truth."

2 Remember that yesterday? A Right.

3 Q You did promise you'd do everything in your
4 power and everything in your means in the context we have
5 gone over, didn't you? A Exactly.

6 Q No question about that.

7 And you told Assistant Prosecutor Hull about
8 it? A I imagine so. He was the trial attorney.

9 Q You don't recall whether you told Prosecutor
10 Thevos about this? A No, I don't.

11 Q But, it's clear that you personally never in
12 writing or orally told Mr. Raymond Brown or Mr. Arnold
13 Stein of those promises, did you?

14 MR. GOCELJAK: I object to it. It's
15 repetitive.

16 THE COURT: Yes. We only heard it three
17 times.

18 But, answer it again.

19 Do you remember the question?

20 MR. NOONAN: Would you read it back?

21 THE COURT: Whether you told Mr. Brown or Mr.
22 Stein.

23 THE WITNESS: No, I don't believe so.

24 THE COURT: About the promises?

25 THE WITNESS: No, I don't believe so.

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MR. NOONAN: May I have the letter to the
Governor, the letter marked S-5 in evidence, please
THE COURT: Yes.

1 Q S-5 is dated July 7th, 1967, isn't it?

2 A Yes.

3 Q That was never transmitted to the Governor, was

4 it? A No, sir.

5 Q That was because at page 426 you said at line
6 14:

7 "Answer: I said, Dexter, I have here before me
8 this letter -- I think the original is somewhere here -- I
9 said, now, if you decide I will send this, however, all you
10 will do is alert others. I'm going to try my best to help
11 you. Now, if you want to send this letter I'll send it,
12 but all you will do, I said, don't you trust me? That is to
13 promise you to do what I can possibly do --" remember that?

14 A Yes, sir.

15 Q Lieutenant DeSimone, in your now-27 years as a
16 law enforcement officer, you pride yourself on your, you
17 try to get all the facts, don't you?

18 A I do.

19 Q You pride yourself if you make a promise --

20 MR. GOCELJAK: Your Honor, I object to the form
21 of the question.

22 MR. NOONAN: Have you heard the full question
23 yet?

24 THE COURT: All right. Proceed.

25 MR. NOONAN: Thank you, your Honor.

1 Q Lieutenant DeSimone, you consider yourself a
2 man of your word, don't you?

3 A Precisely.

4 Q On the tape which has been received in evidence
5 as S-8, my recollection is that you told Bello "Talk to any
6 of the guys in the can or on the street and they will tell
7 you DeSimone is rough, but right"?

8 A I take pride in that.

9 Q You wanted to follow through with your promise
10 to Dexter Bradley to do whatever you could?

11 A Exactly.

12 Q You did follow through, didn't you?

13 A Exactly. To the best of my ability.

14 MR. NOONAN: May I have this two-page document
15 marked DA-11 for identification? May I have it
16 stapled. I'm keeping it --

17 THE COURT: Never mind your personal problem.
18 DA-11 for identification.

19 What is the date?

20 MR. NOONAN: July 7th, 1967.

21 (DA-11, document, received and marked for
22 identification.)

23 Q Incidentally, when you picked up what is now
24 being received in evidence as S-5, you got that from Dexter
25 Bradley at the Morris County Jail, didn't you?

1 A Yes, sir.

2 Q Do you recall whether you were there in the
3 morning or the afternoon?

4 A No, I don't. I don't know if I was there on July 7th.
5 Are you saying I was there July 7th?

6 Q Well, let's --

7 THE COURT: That's the date of the letter.

8 THE WITNESS: That's the date the letter was
9 written?

10 THE COURT: How could he be there?

11 Q You received a call from Warden Underhill?

12 A Right.

13 Q Advising you Bradley wrote a letter to Governor
14 Hughes and in view he's in fact in jail all mail is censored,
15 you went up and read the letter, but you don't know the
16 day?

17 A I don't know the date. I asked him
18 to hold it. I know I went up there.

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1 MR. NOONAN: May I have a two-page report marked
2 DA-12 for identification.b

3 THE COURT: It will be marked DA-12.

4 (DA-12, Post Trial Report, marked for identi-
5 fication.)

6 Q Now, Lt. DeSimone, I show you DA-12 for identi-
7 fication, a copy of which you have in front of you?

8 A Right. You can use that one and I'll use this one.

9 Q All right. You kindly through the prosecutor,
10 furnished this to me last night, right, Lieutenant?

11 A That's correct.

12 Q And that is a summary of Post Trial Activities
13 by yourself and others in the Prosecutor's Office on behalf
14 of Bradley, isn't that correct? A Yes. And this
15 was just prepared recently.

16 Q All right. A Preparing for this
17 hearing.

18 Q And in preparing it, did you prepare it from
19 notes that you had made as you made these things?

20 A Notes, reports, my day book, memory after my memory
21 was refreshed and it may not be totally accurate, it's just
22 a guide for me to testify.

23 Q All right. And you prepared this when?

24 A In the last two weeks, last week. This has been in
25 process for preparation for this hearing.

1 Q In the area, on DA-12, on July 7, 1967 you have
2 put, "Received telephone call from Det. Jansen, Morris
3 County Prosecutor's Office, suggested that immediately
4 following sentence subject be remanded to Bergen County.
5 Telephoned Lt. Byron requesting that Bradley be brought
6 to Essex on a daily basis for arraignment and sentence."

7 Correct? A Right.

8 Q And you still don't know whether on that date,
9 July 7th, the same date as S-4 that you received notice
10 from Warden Underhill about that letter? A No,
11 I don't, I don't. It was around July 7.

12 Q Okay. Now, on the same day -- I am going to
13 show you DA-11 for identification and --

14 MR. COCELJAK: Your Honor, may we have a notation
15 as to DA-11.

16 MR. NOONAN: This starts off Confidential. Well,
17 let me have the witness identify it, Judge.

18 THE COURT: All right.

19 Q Is that your signature? A May I see
20 it?

21 Q Sure. A Yes. This was a confidential
22 memo that I sent to Chief Walter Spahr, Chief of County
23 Detectives, Bergen County, since resigned or retired.

24 Q And it's dated July 7, is it not?

25 A Yes, sir, so it appears, yes.

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MR. NOONAN: Does Mr. Gourley have any objection for this going into evidence so I can read it?

MR. COURLEY: No, there is no objection to this going into evidence.

THE COURT: All right, mark it DA-11 in evidence.

(DA-11, previously marked for identification, received in evidence.)

L1Ft1 1 Q Now, this is your confidential memorandum of

2 Walt Spahr -- A That's correct,

3 Q -- that's now been received in evidence?

4 I'm referring to the charges of Arthur Dexter
5 Bradley of S 62-66, armed robbery with firearms and S 63-66,
6 larceny of motor vehicle, you wrote Walter Spahr and told
7 him, "Yesterday I spoke with Detective Kikkert on the phone
8 and asked him to relay a message to you re above-captioned
9 subject."

10 Do you remember typing that?

11 A I don't know if I typed it.

12 Q Or having it typed on your behalf?

13 A I remember having it eventually delivered. Whether
14 it was mailed or hand-delivered, I don't recall. I would
15 imagine it went to Walt Spahr. I'm not sure.

16 Q And then you said, "Because of the fact that
17 I will be on vacation for one week commencing July 10, I am
18 taking this opportunity to give you a rundown of what has
19 transpired since I last spoke to you about Bradley and our
20 hopes for the future."

21 Do you remember that? A Yes.

22 Q And then do you remember continuing, "Bradley
23 was sentenced in Union County on June 29th, 1967, 3 to 5
24 years State Prison total. He's slated for sentence in
25 Morris County on July 14, next. It would be appreciated if

1
L1-2 2 shortly after the Morris sentence you would have him brought
3 to Bergen and remanded pending arraignment and sentence.
4 While he's remanded in Bergen we hope to have him brought
5 to Essex County on a daily basis for arraignment and sentence,
6 respectively. We hope to do this to avoid an extended stay
7 in the Essex County Jail which has a large Negro population.
8 This procedure was followed in the Union-Morris situation.
9 When you are finished with him we'll have him brought to
10 Passaic County to dispose of two lesser charges and then
11 will transport him to Trenton from here." Do you remember
12 that? A Yes.

13 Q And then next paragraph, do you remember
14 dictating or however it was done:

15 "On the same day that he arrives in Trenton
16 he will be transferred to Leesburg if everything goes
17 according to plan." Do you remember that?

18 A Precisely.

19 Q And one of the promises that you made to
20 Arthur Dexter Bradley without guaranteeing it, that you'd
21 go to the top people in the State and if you could transfer
22 him to Trenton the same day he arrived to some more safer
23 place you'd do it; right? A Precisely.

24 Q And you told Arthur Dexter Bradley that
25 before he ever testified to that in this trial, in the
month of May, 1967, didn't you? A Before he

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1 testified?

2 Q Yes. A I imagine so. I imagine so.

3 Q You personally never told Mr. Brown or Mr.

4 Stein of that promise, did you? A I don't

5 believe so.

6 Q All right.

7 Then at the concluding paragraph on the first
8 page you say, "It is our hope that the Morris County sentence
9 is concurrent with the Union County sentence and that the
10 same thing occurs in your county and Essex."

11 Didn't you say that? A Precisely.

12 Q So that you did a little something more than
13 just relate to the Union, Morris, Essex, Bergen and Passaic
14 County authorities that Arthur Dexter Bradley --

15 MR. GOCELJAK: I'm going to object to the
16 form of the question.

17 THE COURT: Let him finish the question.

18 Q (Continuing) -- that Arthur Dexter Bradley
19 was an important witness in a triple homicide case and that
20 you were -- he had testified for you and that you were re-
21 laying that information to them in the hope that they would
22 relate it to their county probation departments in the hope
23 that it would be included in the presentence investigation
24 report; correct? A Yes.

25 MR. GOCELJAK: I object to the form of the

Li-4 1 question, because it includes a number of counties.

2 I think here we are referring to one county.

3 THE COURT: Well, this refers to Bergen County

4 All right.

5 Q (By Mr. Noonan) Limiting it to just Bergen

6 for a moment, although you mentioned Union, Morris and

7 Essex, that you hope he would get concurrent sentences in

8 all these counties, don't you? A I know I didn't

9 say that specifically. I said he would get consideration.

10 Now, if this followed, fine. As a matter of fact,

11 I testified I was ultimately disappointed that he didn't

12 get credit for the County Jail time.

13 Q Right.

14 Doesn't the last paragraph on the first page

15 of DA-11 in evidence, which, of course, speaks for itself,

16 say, "It is our hope that the Morris County sentence is con-

17 current with the Union County sentence" --

18 A Yes, but one thing --

19 Q Please, let me finish my question, Lieutenant

20 DeSimone. A All right.

21 Q All right, sir? A Yes, sir.

22 Q -- "and that the same thing occurs in your

23 county and Essex." Correct? A Certainly.

24 THE COURT: He said it was his hope.

25 That is enough. You have answered it.

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Do you have another question?

MR. NOOHAN: Yes, sir, I do.

THE COURT: Go ahead.

end

1 Q (By Mr. Noonan) Now, going to the second page,
2 and again specifically referring to these charges in Bergen,
3 you state, "Prosecutor Calissi requested that he be reminded
4 via letter about Bradley when Vince Hull (Assistant
5 Prosecutor) conferred with him on June 2nd, 1967 so that he
6 could make a pitch with the sentencing Judge for a
7 concurrent sentence."

8 Do you remember that?

9 A I don't remember, but since it's there, it must have
10 happened.

11 Q And then you said, "Kindly advise if you
12 consider this necessary."

13 A Must have happened.

14 Q Then you said about Vince Byron, who was a
15 Lieutenant in the Essex County Prosecutor's office at that
16 time; right? A Right.

17 Q "Vince Byron has been apprised of the situation
18 and will follow up after Bradley is remanded in your county";
19 correct? A Precisely.

20 Q And then you concluded by saying, "As I stated,
21 I will be on vacation next week, but if any problems arise
22 you can contact Detective Gene Frederick who is familiar with
23 the facts of this matter. Thanks a million for your
24 cooperation. Sincerely, Vince;" correct?

25 A Exactly.

1 Q So that at least in Bergen County, as appears
2 by this letter, you did something a little bit more than
3 you testified to at page 427, and I'll read that to you and
4 then put a question to you.

5 "However, I couldn't promise anything, but I
6 would do what I could in that vein." Referring back to
7 protection.

8 "Number two, I would contact every Prosecutor's
9 office where there were pending charges and advise my fellow
10 County Detectives that this man had testified in a triple
11 homicide and ask them if they would do what I had done in
12 my county and sought out the probation officer preparing the
13 PSI and advising him so that the sentencing Judge would know
14 at the time of sentence that this man had testified for the
15 State in a triple homicide."

16 Remember testifying to that?

17 A Yes, sir.

18 Q And at least in July of 1967 you did a little
19 something more than that, didn't you?

20 THE COURT: You mean in writing this memo?

21 MR. NOOHAN: Yes.

22 Q You asked Walt Spahr that it was your hope that
23 he would get concurrent sentences in his county, Union
24 County, Morris County and Essex Counties?

25 A But the primary purpose for writing the letter was a

1 different thing that hasn't been mentioned yet.

2 Q What was that, protection?

3 A We followed normal protocol. Bradley was taken from
4 Morris County to Union County and he would have remained in
5 Union County from arraignment up until sentence, but the
6 first night he was in the Union County Jail he was worked
7 over by a couple of inmates. He was then brought back to
8 Morris County and the request was that he be either remanded
9 in Morris or Bergen and be taken to Essex on a daily basis,
10 brought down there for arraignment, then back to Bergen,
11 brought down there for sentence and then back to Bergen.
12 This was the primary reason for this missile, because I had
13 discussed this with not only Chief Spahr, but Captain
14 Kikkert.

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1 Q All right. But you did tell Walt Spahr that it
2 is your hope he would get a concurrent sentence in Bergen
3 County, didn't you? A Precisely.

4 Q And it was your hope that he would get the same
5 concurrent sentences in Morris and Essex? Don't you say
6 that in there? A Yes, sir. I wouldn't be able
7 to guarantee anything.

8 Q All right. A It's just common
9 sense.

10 Q But at no time prior to trial did you make known
11 to anyone -- withdraw that question.

12 When did you make that decision to ask for concurrent
13 sentences? A I never --

14 THE COURT: He didn't ask for concurrent sen-
15 tences. Just a minute.

16 Q Hoped for concurrent -- A I never
17 made definite statement. In informal talks, if you notice
18 missile, with Chief Spahr, is not on prosecutor's stationery,
19 is a confidential memo, this is cop talk. This was nothing
20 official talking to any police officer, probation or judges
21 or anything like that.

22 MR. NOONAN: Judge, may I have DA-10 or 11,
23 whatever it is, DA-11.

24 Q Did you also say that on page two of DA-11 that,
25 Prosecutor Calissi requested he be reminded via a letter